

Joseph G. Pia (9945)
joe.pia@padrm.com
PIA ANDERSON DORIUS REYNARD & MOSS
Wells Fargo Center
299 South Main Street, Suite 1710
Salt Lake City, Utah 84111
Phone: (801) 350-9000
Facsimile: (801) 350-9010

Attorneys for Plaintiff and Counter-Claim Defendant ETAGZ, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ETAGZ, INC.,

Plaintiff,

v.

FLAMBEAU, INC., et al.,

Defendants.

**PLAINTIFF ETAGZ INC.'S
MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE DEFENDANT
FLAMBEAU INC.'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO STAY PENDING REEXAM**

FLAMBEAU, INC.,

Counterclaim Plaintiff,

v.

ETAGZ, INC.,

Counterclaim Defendant.

Case No. 2:10-cv-00240-BSJ

Magistrate Judge Bruce S. Jenkins

Plaintiff/Counter-Claim Defendant Etagz, Inc. ("Plaintiff" or "Etagz"), by and through undersigned counsel, hereby respectfully submits this Memorandum in Support of its Motion to Strike Defendant Flambeau, Inc.'s ("Flambeau" or "Defendant") Supplemental Memorandum in

Support of its Motion to Stay Pending Reexam. Flambeau filed its Motion to Stay on December 10, 2010, which was subsequently joined by Defendant TV Guide Magazine, LLC (“TV Guide”) on December 22, 2010. Flambeau later submitted a Supplemental Memorandum in Support of its Motion to Stay on January 6, 2011. For any one or more of the following reasons explained in detail herein, Plaintiff requests that Flambeau’s Supplemental Memorandum be stricken.

ARGUMENT

DEFENDANT FLAMBEAU’S SUPPLEMENTAL MEMORANDUM IS IMPROPER AND MUST BE STRICKEN UNDER THE RULES OF PRACTICE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH.

Pursuant to Rule 7-1(b)(3) of the Rules of Practice of the United States District Court for the District of Utah, Defendant’s Supplemental Memorandum is improper and must be stricken. The pertinent rule lays out the format for submitting memoranda of supporting authorities filed with a motion for court action. *See* DUCivR 7-1. The rule specifically provides that outside the supporting memorandum filed concurrently with a motion requesting an order of the court, “No additional memoranda will be considered **without leave of the court.**” DUCivR 7-1(b)(3) (emphasis added). It is common knowledge among practitioners before this Court that supplemental memoranda, such as the one at issue, require a motion for leave of the court and then an order granting that motion to be deemed proper. In fact, this Court generally discourages supplemental briefing which “may only be filed with leave of court.” *Wing v. Dockstader*, 2:08 CV 776, 2010 WL 5020959, *5 (D. Utah Dec. 3, 2010). Additionally, Rule 7-1(b)(5) provides citations of supplemental authority “when pertinent and significant authorities come to the attention of a party after the party’s [supporting] memorandum has been filed.”

In the present action, however, Defendant has failed to move the court for leave to file its Supplemental Memorandum. Moreover, the same Memorandum does not cite to any pertinent or significant authorities as contemplated by the aforementioned rule, but presents mere facts for the Court's consideration. It is clear that Defendant's Supplemental Memorandum falls outside the scope of the requirements imposed by this Court's Rules of Practice and should be stricken accordingly.

CONCLUSION

Based on the reasons set forth above, Plaintiff respectfully requests that this Court strike Defendant's Supplemental Memorandum in Support of its Motion to Stay. In the alternative, Plaintiff urges this Court to permit Plaintiff's counsel 14 days from the filing of Defendant's Supplemental Memorandum within which to file a responsive brief.

DATED this 12th day of January, 2011.

PIA ANDERSON DORIUS REYNARD & MOSS

/s/ Joseph G. Pia
Joseph G. Pia
Attorneys for Plaintiff Etagz, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via electronic filing on the following em/ecf participants, this 12th day of January, 2011 to:

H. Dickson Burton hdburton@traskbritt.com, lmondragon@traskbritt.com,
tlpalfreyman@traskbritt.com

David M. Bennion ecf@parsonsbehle.com

Matthew J. Duchemin matthew.duchemin@quarles.com, mary.sconcert@quarles.com,
tina.kincaid@quarles.com

Martha Jahn Snyder martha.snyder@quarles.com

Anthony A. Tomaselli anthony.tomaselli@quarles.com, mary.sconcert@quarles.com,
tina.kincaid@quarles.com

Krista Weber Powell kwpowell@traskbritt.com

PIA ANDERSON DORIUS REYNARD & MOSS

/s/ Joseph G. Pia
Joseph G. Pia
Attorneys for Plaintiff Etagz, Inc.